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IN THE

Supreme Court of the United States

October Term, 1942.

No. 275.

PACIFIC COAST DAIRY, INC., a corporation,

Appellant,

vs.

DEPARTMENT OF AGRICULTURE OF THE STATE OF CALIFORNIA; WILLIAM J. CECIL, Director of Agriculture of the State of California; BUREAU OF MARKET ENFORCEMENT OF THE STATE OF CALIFORNIA; C. J. CAREY, Chief; E. E. BROWN, Auditor of the Bureau of Market Enforcement of the Department of Agriculture of the State of California,

Appellees.

PETITION FOR REHEARING.

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W. R. AUGUSTINE,
WALTER L. BOWERS,
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Parker & Baird Company, Law Printers, Los Angeles

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Appellees.

PETITION FOR REHEARING.

Come now the above named appellees and present this their petition for a rehearing of the above entitled cause and in support thereof respectfully show:

Decision.

The State of California prohibits its licensed milk distributors from purchasing from producers, and from processing, bottling and handling in designated marketing areas in the State any milk that is sold or is to be sold

below the State's prescribed minimum prices. Violation is made a ground for action against the distributor's license.

On March 1, 1943, the Supreme Court of the United States, in an opinion handed down by Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Murphey dissenting, decided that the State of California cannot constitutionally take any action against its licensed distributors for violation of this provision in those instances where the sale is made by the distributor to the Federal Government upon a Federal enclave within the State. The decision would apply to the same extent if the sale were made to any party within such a Federal enclave.

The decision in this case necessarily hinges upon a differentiation drawn between sales made to the Federal Government within the geographical boundaries of the State upon land, the jurisdiction over which has been ceded by the State to the Federal Government, and upon land over which the State retains its jurisdiction. Otherwise, the decision rendered the same day in *Penn Dairies, Inc. v. Milk Control Commission*, No. 399, October Term, 1942, would govern.

At the outset we are strengthened by the fact that some members of this Court who supported the majority opinion herein and dissented in the *Penn Dairies* case, *supra*, concurred wholeheartedly in the equity of the State's position, as witness the statement of Mr. Justice Black to counsel for the State at the time of the oral argument:

> "I can see a very strong argument that the Army should not do this. I think most anyone can recognize the force of the argument you make,—that this is not right to go on and buy cheaper milk, cheaper than the regular price of the State."

Unfortunately, in the California case the argument was directed by the Court almost wholly and simply to the principle of sales made to the Federal Government, which was the sole question for the following argument in the *Penn Dairies* case. While, in the California case the only question in contradistinction to the ruling in the *Penn Dairies* case—that of a possible determining factor of Federal enclave—was not discussed or argued.

Import of Decision.

We feel that this Court has not appreciated the full import of its decision in this case. There are literally hundreds of these Federal areas within California where milk may now be sold without regard to price. There are actually hundreds of thousands of our armed forces, as well as thousands of civilians, in these Federal areas who by this decision will be subjected to a milk supply which may now be sold at those cut-throat below-cost prices which the Federal as well as State governments have both long ere this recognized as resulting in the scourges of typhoid and onslaughts of tuberculosis which have so devastated and crippled humanity in the not yet dim ignorant past.

And shall we now for the sake of a technical priority sacrifice the finest of our young manhood who are so valiantly rendering up their young bodies to our complete disposal that we may all live in the ideals which have become an integral part of America to the nefarious machinations of traffickers to whom intestinal bacilli and their murderous kin are but one with the daisies of the fields?

Without doubt every state in the Union will be vitally affected, for, by the same token, all of those health and

sanitary regulatory standards, not only for milk but for the numerous other commodities where the punishable offense consists of the combined elements of preparation and sale, are rendered hopelessly innocuous if the sales take place on Federal enclaves, the teeming spots of humanity which should be doubly and ably protected against all *preventable* suffering and even disabling in preparation for the possible supreme sacrifice yet to come.

Enforcement of these standards is to a large degree tied up with sales.

For example, the enforcement provision of the market milk standards in California is found in Sec. 472 of the Agricultural Code, which makes it "unlawful to sell, purchase, or use as market milk, * * * milk * * * which does not meet the requirements and standards of market milk * * *." Production or possession of impure or contaminated milk is not of itself, alone, punishable.

When all sales of market milk within the State were deemed subject to this provision and distributors knew that violation of such standards meant loss of license, these standards could be efficiently policed by inspection of the dairies and of the milk plants.

Effect on Health Standards.

However, with a vast and growing market within the State now freed from these regulations and not subject to these standards, producers and distributors alike are immune from punishment and may produce and distribute whatever impure, contaminated and dirt infested milk that they can get by with, restrained only by such federal inspection as may be provided and whatever damage may be

suffered consequent upon violation of their federal contracts.

Moreover, the danger of contamination and infection to the entire milk supply of the State arising from this uncontrolled and unregulated milk production and distribution is fraught with too dire possibilities to be permitted without fully exploring every legal concept in an effort to prevent the same.

Another section, 642 of the Agricultural Code, provides that:

> "It is unlawful to sell, give away, deliver, or to knowingly purchase or receive any milk, goat's milk, sheep's milk or product thereof which has been produced in or by a dairy farm or milk products' plant in an insanitary condition ('insanitary condition' being defined elsewhere in the code) or that is handled by any carrier of milk or products thereof or in any store or depot that is in an insanitary condition; or that is produced from animals affected by any disease, except as hereinafter provided."

But suppose the contract is entered into and the sale and delivery of milk or milk products in violation of that section take place on federal ceded territory. Under the quoted section it is the *sale* and *delivery* that constitutes the unlawful act. Under the decision in the instant case, California would be powerless to punish that act or to revoke a distributor's license for such violation, because the sale, occurring on federal territory, was there lawful

Similar examples might be cited, applying in the same manner to numerous fruit and vegetable standards and regulations.

We submit that every State has and should have the power to reach such a situation. The purpose is not, as stated in the opinion of the Court, to punish citizens for doing in federal territory what by the law of the United States is there lawful. The true purpose is wholly to the contrary. It is to protect the health and welfare of its own citizens. And that protection the Federal Government has relied upon and should now rely upon. In this case the fact that the milk was sold to the United States and that it was sold on ceded territory were mere incidents. The destination of that milk and the identity of that buyer were indifferent circumstances wholly incidental to the transaction.

The entire California program of health, sanitation and stability of the milk supply will not only be dangerously undermined in the State as a whole, but will be completely lost to occupants of the Federal areas within California's boundaries.

To afford protection, Congress would be forced to legislate on these myriad local requirements and to supply inspection and enforcement at these hundreds or thousands of Federal areas. *Since the inception of our government Congress has left this to the several States and relied upon them for its protection.*

So far as our inquiry has progressed, in every single instance the furnishing of public utilities, such as water, light, power, gas, transportation, etc., to Federal areas within a State has been completely governed by the rates and regulations of the State body entrusted with public utilities administration. In the single instance where this State authority appears to have been questioned a Federal court upheld the State power, although the text does not

disclose whether the Federal area was ceded territory or not,—a distinction which the court *then* apparently deemed unimportant. *United States v. Oklahoma Gas & Elec. Co.*, 297 Fed. 575.

Doctrine of Osborn v. Ozlin.

In the instant opinion this Court says:

> "The court below points out that the statute regulates only the conduct of California's citizens within its own territory; that it is the purchasing, handling, and processing by the appellant in California of milk to be sold below the fixed price—not the sale on Moffett Field—which is prohibited, and entails the penalties prescribed by the statute. And reliance is placed upon the settled doctrine that a state is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders."

The decision recognizes the "settled doctrine that a State is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders." (*Alaska Packers Assn. v. Commission*, 294 U. S. 532, 541; *Osborn v. Ozlin*, 310 U. S. 53, 62-63.)

This settled principle is met, however, with the simple statement, unamplified by discussion or supported by precedent, that such doctrine is without application here because of the authority granted the Federal Government over Moffett Field.

This conclusion would appear to be necessarily based on a holding that the sovereignty of the United States over a Federal enclave as related to the State in which it

lies is more complete than is the sovereignty of a State over its own territory as related to a sister State.

In *Osborn v. Ozlin, supra*, Virginia provided that insurance companies licensed to do business in that State should not make contracts of insurance on persons or property within the State except through resident agents therein who could not share more than one-half of the commission with a non-resident agent. Violation was made a ground for suspension or revocation of the license to do business in Virginia. (To same effect, see *Hoopeston Canning Co. v. Pink*, No. 358 October, 1942, Term, decided March 1, 1943.)

The contract made by the insurance company in the State of New York insuring property in Virginia and paying to the agent in New York who produced the business the full commission was just as valid a contract as was the contract in the instant case between the distributor and the Federal Government to furnish the milk at Moffett Field.

This Court in the *Ozlin* case, however, upheld the Virginia regulation, and said:

> "Virginia has not sought to prohibit the making of contracts beyond her borders. She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed."

California has not sought to prohibit the making of milk contracts in Moffett Field or in other Federal enclaves within the State. She, likewise, merely claims that her interest in protecting the health and welfare of her citizens warrants the kind of control she has here imposed.

Certainly the maintenance and protection of an adequate and of a pure and wholesome supply of milk is far more essential to the interest of the State (and of the Federal Government as well) than is "minimizing the risks of casualty and loss" in insurance.

Exclusive Jurisdiction.

While unquestionably the jurisdiction of the Federal Government in such "ceded" enclaves as Moffet Field is exclusive, the "exclusiveness" of that jurisdiction is no greater nor more potent than the jurisdiction of the State within its sphere.

Federal jurisdiction in its appropriate sphere is supreme; but the states within the limits of their powers not granted, or as expressed by the Tenth Amendment "reserved," should be as independent of the general government as that government within its sphere is independent of the states. (*Buffington v. Day*, 78 U. S. (11 Wall.) 113, 124, 20 L. Ed. 122.)

It is not apparent what greater sanctity attaches to the validity of a contract made in compliance with the Federal laws on Moffett Field because of Federal jurisdiction, than attaches to the validity of a contract made in compliance with the laws of New York because of the jurisdiction of that State.

Yet this Court reached the conclusion in the *Oslin* case, *supra*, that the State of Virginia might revoke the license of an insurance company for making a contract in New York to pay the full commission to a resident New York agent on insurance covering Virginia property because such a contract violated the Virginia statute.

On the other hand, in the instant case it is held that California may not take measures affecting one of its licensed distributors for violations of a California statute, because one of the component elements of the violation, to-wit, the sale, took place on Moffett Field, a Federal enclave situate within the boundaries of California.

Under these insurance decisions it cannot be doubted that if the transactions occurred even in a foreign country the State legislation would still be valid as applied to the activities within the State which enacted the laws. For example, if the *Ozlin* case had involved a contract of insurance effected in Canada, the result clearly, under the reasoning of the Court would have been the same.

Nevertheless, in the case at bar this Court has held that in a similar situation where the acts which constitute an essential element in the violation occur within a Federal enclave, "exclusive jurisdiction" of the United States wholly defeats the power of the State over the acts of its own citizens committed within the State—and this in a situation where the legislation is enacted pursuant to the police power of the State in its most fundamental sense, for the protection of the life and health of its inhabitants and also of the occupants of the Federal areas.

We believe that this reasoning is incompatible with this Court's construction of Article I, Section 8, Clause 17, of the Constitution providing that the United States shall have power to exercise "exclusive legislation" over Fed-

eral areas. From the beginning this Court has held that the Federal sovereignty over such areas is far more circumscribed than is the sovereignty of a State over the territory within its jurisdiction—which was involved in the *Ozlin* and other similar cases. Thus the Court has held that the laws of the State in effect at the date of cession shall continue in effect. (*Stewart & Co. v. Sadraçula*, 309 U. S. 94.) Many other exceptions have been announced (see dissenting opinion of Mr. Justice Frankfurter herein). It is clear, we submit, that regardless of the scope of the "exclusive" jurisdiction which is exercised by Congress over such areas, such jurisdiction is not *more* "exclusive" than that of a sovereign State over *its* territory and citizens.

If the principles of the *Ozlin* case be not adopted as controlling here, then it seems clear that in the interests of the public welfare this Court should hold, as it has held generally in its decisions under the Commerce clause, that the laws of the states enacted in the exercise of the police power in matters of local concern may apply to Federal areas in the absence of contrary Federal legislation. As this Court has held in its decisions under the Commerce clause, this would not deny the exclusive jurisdiction of the United States, for it would have plenary power to enact any legislation at any time, but it would not leave a hiatus in the laws of the Federal areas so that the *very chaotic and dangerous situation now threatening consumers of milk in California (within, as well as without, Federal enclaves) could occur.*

Too much emphasis has been placed, we believe, on the bare, legal aspects of the sale and too little upon the real objectives of the statute. Because of the approach

to the case, companion as it was to the *Penn Dairies* case, from the standpoint of whether or not Congress had affirmatively enacted legislation inconsistent with the California law, the case appears to have been considered almost wholly from the standpoint of an assumption that the only provisions of the law involved are those relating to the sale at a given price. Collateral to this is the assumption that all of the provisions of the State law protecting the supply of milk, its sanitation, its bacterial count, its freedom from tuberculosis and undulant fever, *etc.*, are safeguards still enjoyed by the Army at the lesser price. As a matter of fact, the health provisions of the law stand on exactly the same basis as the price provisions. If these regulations, contingent upon price maintenance fall, because the sale is made upon Federal territory, then all other health regulations, the violation of which are contingent upon a sale, *must likewise fall.*

The decision finds "that the true purpose (of the California statute) was to punish California's own citizens for doing in exclusively Federal territory what by the law of the United States was there lawful." The same statement could be made equally applicable to the Virginia insurance statute above mentioned, where, in that instance, the contract to pay the full commission to the non-resident broker was made in New York.

It is said that this purpose was to be accomplished "under the guise of penalizing preparatory conduct occurring in the state."

We cannot agree that the purpose of this statute was, as the Court indicates, solely to control the price of milk in this Federal area. In fact, the State has consistently repudiated all intent and power to foist its minimum milk price structure into such Federal territory; but it has just as consistently sought to protect the milk supply by insisting that its licensed milk distributors obtain an adequate minimum price for such milk as they handle under their licensed operations in California. The provision of the statute here in question (736.3(a) (6) Agricultural Code) does not apply directly nor exclusively to Federal territory. An examination of this subsection, together with subsections (7) and (8) [See Appendix A to Brief of Appellees, p. 14 on file herein] following the same, demontrates beyond question that this is only part of a comprehensive plan to insure the protection and maintenance of an adequate supply of pure and wholesome milk by means of preventing the utilization of California's milk production by its distributors unless they obtain for the same an established minimum price which the State has found to be *necessary for that purpose*. Where, or to whom, the sale is made is purely incidental. The obtaining of the necessary minimum price is the essential requisite. The fact that the contract was made and the title passed presumably on Federal territory should not defeat this salutary purpose any more so than did the fact in the *Ozlin* case that the contract was made in the State of New York.

United States v. Press Publishing Co.

Nowhere in the opinion is any reference made to the case of *United States v. Press Publishing Co.*, 219 U. S. 1 (1911), 31 S. Ct. 212, 55 L. Ed. 65, cited by counsel in the *Penn Dairies* case, *supra*.

The opinion in the instant case discloses that the decision rests wholly upon the fact that the sale by the licensed distributor below the established minimum price was considered by the Court to be the essential element of the offense. And because this sale occurred in Federal territory, the Court concluded that the State could not punish because such sale was not in violation of any Federal law.

In the *Press Publishing Co.* case, a directly contrary conclusion on facts precisely similar in principle to those here involved was reached by the Court. There, the offense was libel. The utterance and publication took place at the United States Post Office in New York and the West Point Military Reservation, both of which are Federal enclaves over which the Federal jurisdiction is just as exclusive as that over Moffett Field. Just as the instant sale violates no Federal law, so, there, the utterance or publication of the libel violated no Federal law.

In the *Press Publishing Co.* case it was held that the State of New York had the power to punish a libel consummated upon Federal enclaves (the Post Office at New York and the West Point Military Reservation over which the Federal government had exclusive jurisdiction) where the preliminary acts of assembling the material and doing

the printing, one of the elements of the offense, took place in the State of New York and under its jurisdiction. In the present case, the purchasing, handling and processing of the milk, one of the elements of the offense, took place in California, just as the purchasing of the paper, arranging of the material, and the printing of the libelous matter took place in New York in the *Press Publishing* case. In the present instance, only the sale, the final element of the offense, took place in the Federal enclave, just as in the *Press Publishing* case the publication of the libelous matter, the final element of the offense, took place in the Federal enclave. In the instant case, it required the sale and delivery (in this instance on the Federal territory) to complete the offense, just as in the *Press Publishing* case it required the publication (also on the Federal enclave) to complete the libel.

The authority of the *Press Publishing* case has never been questioned and it was cited with approval by this Court in *People of Puerto Rico v. Shell Company*, 302 U. S. 253, 266, 58 S. Ct. 167, 173, 82 L. Ed. 235:

The language used by this Court in deciding the *Hoopston Canning Co.* case the same day it decided the instant case is peculiarly applicable here.

In the *Hoopston Canning* case, following the doctrine of the *Ozlin* case, the Court said:

> "In determining the power of a state to apply its own regulatory laws to insurance business activities, the question in earlier cases became involved by *conceptualistic discussion* of theories of the place of contracting or of performance: More recently it has been recognized that a state may have substantial interests in the business of insurance of its people

> or property regardless of these isolated factors. This interest may be measured by highly *realistic considerations* such as the protection of the citizen insured or the protection of the state from the incidents of loss. * * *" (Emphasis added.)

Surely the interest that the State (and the Federal government, as well) has in an adequate, pure and wholesome milk supply for its people is far more substantial and vital than its interest in the business of insurance of its people or property.

Apparently we are left with no alternative other than to glean from these two decisions (*Pacific Coast Dairy* and *Hoopston Canning Co.* cases) that the Court will follow a *conceptualistic* approach when relations between the State and Federal governments are involved. Then, "the niceties of the law of sales and contracts" and the passing of title and terms of cession and the degree of "exclusiveness" of jurisdiction must be weighed, while men, women and children, both within the State and within the Federal areas, are exposed to the dangers of impure and unwholesome milk, as well as a shortage of fresh milk.

But in the relation between a State and private parties the protection of the financial interest involved may be approached from such a *realistic* viewpoint as to allow the State to protect *these interests* to the point of regulating what its licensees may *not* do in other states, even if perfectly valid under the laws of such other states.

We attach hereto as an addenda, in accordance with the instructions and under the authority of the Attorneys General of the States named, the request of a majority of the States of the Union that a rehearing of this cause be granted.

Conclusion.

We believe that the tremendous import of this decision, which appears to be one of first impression; its vital and far-reaching effect in so many of our States; its divergence from the result reached relating to extraterritorial state control over insurance, a matter of far less moment; its apparent departure from the principles of the *Press Publishing* case; and the confusion and practical conflict possible in adjoining military reservations in the price and purity of milk supplied, dependent wholly upon the title and terms of cession of the military site, justly warrant a further consideration of this case by a full Court.

And we present this petition in the hope that this high Court may be able to find it within its power to reconcile the legal requirements to the health exigencies, thus enabling all of these States to hold together their humanitarian regulations, so hardly gained, and as a final protection to the vastly increasing Federal enclaves filled with their myriad youth, no longer under the protection of their home states.

Respectfully submitted,

ROBERT W. KENNY,
Attorney General of the State of California;
W. R. AUGUSTINE,
WALTER L. BOWERS,
Deputies Attorney General,
Counsel for Appellees.

I, Walter L. Bowers, counsel for the above-named appellees, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

WALTER L. BOWERS,
Counsel for Appellees.

Addenda.

The following named States by their respective Attorneys General hereby join in respectfully requesting and earnestly urging that a rehearing be granted in the within entitled case of *Pacific Coast Dairy Co. v. Department of Agriculture et al.*

State of Alabama:
William N. McQueen, Acting Attorney General.

State of Arizona:
Joseph W. Conway, Attorney General.

State of Arkansas:
Guy E. Williams, Attorney General.

State of Colorado:
Gail L. Ireland, Attorney General.

State of Connecticut:
Francis A. Pallotti, Attorney General.

State of Delaware:
Clair J. Killoran, Attorney General.

State of Florida:
J. Tom Watson, Attorney General.

State of Georgia:
T. Grady Head, Attorney General.

State of Idaho:
Bert H. Miller, Attorney General.

State of Iowa:
John M. Rankin, Attorney General.

State of Kentucky:
Hubert Meredith, Attorney General.
M. B. Holifield, First Assistant Attorney General.

State of Louisiana:
Eugene Stanley, Attorney General.

State of Maine:
Frank I. Cowan, Attorney General.

State of Maryland:
William C. Walsh, Attorney General.

State of Missouri:
Roy McKittrick, Attorney General.

State of Minnesota:
J. A. A. Burnquist, Attorney General.

State of Montana:
R. V. Bottomly, Attorney General.

State of New Mexico:
Edward P. Chase, Attorney General.

State of Nevada:
Alan H. Bible, Attorney General.

State of New Hampshire:
Stephen M. Wheeler, Acting Attorney General.

State of North Carolina:
Harry McMullan, Attorney General.

State of North Dakota:
Alvin C. Strutz, Attorney General.

State of Oregon:
I. H. Van Winkle, Attorney General.

State of South Dakota:
George T. Mickelson, Attorney General.

State of Utah:
Grover A. Giles, Attorney General.

State of Vermont:

Alban J. Parker, Attorney General.

State of Washington:

Smith Troy, Attorney General.

Fred E. Lewis, Acting Attorney General.

State of West Virginia:

Ira J. Partlow, Acting Attorney General.

State of Wyoming:

Louis J. Omarr, Attorney General.

pp. 1, 2, 3, 5 + 6 dissent

SUPREME COURT OF THE UNITED STATES.

No. 275.—October Term, 1942.

Pacific Coast Dairy, Inc., Appellant, vs. Department of Agriculture of California et al. } Appeal from the Supreme Court of California.

[March 1, 1943.]

Mr. Justice Roberts delivered the opinion of the Court.

The appellant challenges a judgment of the Supreme Court of California[1] dismissing a writ of alternative mandamus and denying a permanent writ to prevent the Department of Agriculture of the State from conducting a proceeding to revoke its license as a distributor of milk. The court, in denying relief, overruled several contentions, based upon the federal Constitution, which are here renewed.

Chapter 10 of the Agricultural Code of California[2] provides a plan for the "stabilization and marketing of fluid milk and fluid cream". It declares their production and distribution a business affected with a public interest, and the regulation of the business an exercise of the police power; states that existing unjust, unfair, destructive and demoralizing practices menace the health and welfare of the people, despite sanitary regulations; and that it is necessary to promote intelligent production and orderly marketing by eliminating the evil practices existing in the industry.

The law empowers the Director of Agriculture to license distributors and to establish marketing areas within which uniform prices and regulations for the sale of milk shall prevail.

The appellant was a licensed distributor doing business in the Santa Clara County marketing area, in which there were in effect a

[1] 19 Cal. 2d 818; 123 P. 2d 442.

[2] Deering, 1937, Div. 4, c. 10, §§ 735-738, as amended, Deering, 1941 Supp., pp. 462-467.

stabilization and marketing plan and schedules of minimum wholesale and retail prices. It entered into a contract with the War Department of the United States, signed by the Quartermaster's Department of Moffett Field, to sell milk to the Department at Moffett Field, which lies within the boundaries of the Santa Clara County marketing area, at less than the minimum price fixed for the area. Sales and deliveries under the contract took place on Moffett Field.

A complaint was filed with the Department of Agriculture charging the appellant violated § 736.3(a)(6) of the Code which provides that an unfair practice, warranting revocation of license or prosecution is:

"The purchasing, processing, bottling, transporting, delivering or otherwise handling in any marketing area of any fluid milk or fluid cream which is to be or is sold or otherwise disposed of by such distributor at any place in the geographical area within the outer, outside and external boundaries or limits of such marketing area, whether such place is a part of the marketing area or not, at less than the minimum wholesale and minimum retail prices effective in such marketing area."

This section did not appear in the Code until 1941,[3] when it was added as an amendment. California recognized its lack of power to fix retail prices for milk sold within federal enclaves located in the State.[4] But the legislature desired to accomplish this. In 1941 it memorialized Congress, requesting passage of a federal law requiring purchasing officers of the armed services purchasing food supplies for troops or agencies of the United States located in the State to refuse bids for milk at prices below those fixed under the California Milk Stabilization Law or amendments thereof.[5] The memorial was referred to the Committee on Agriculture of the House and to the Committee on Agriculture and Forestry of the Senate,[6] but was never acted upon by either committee. Congress having failed to act, Section 736.3(a)(6) and others were added to the Code, July 16, 1941, for the purpose of reaching sales on federally owned lands.

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[3] Cal. Stats. 1941, Chap. 1214; p. 3008.

[4] Opinions of California Atty.-Gen. N. S. 1905, N. S. 1950 [1939]; Consolidated Milk Producers v. Parker, 19 Cal. 2d 815; 123 Pac. 2d 440; cf. Standard Oil Co. v. California, 291 U. S. 242.

[5] Cal. Stats. 1941, Chap. 65, p. 3402.

[6] 87 Cong. Rec., Part 5, 5644, 5698.

Moffett Field was acquired by the United States under an Act of Congress,[7] and it is conceded that it has always been under the exclusive jurisdiction of the federal government.[8]

The appellant sought a writ of mandamus from the court below to restrain the Department of Agriculture from proceeding to hear and act upon the pending complaint. An alternative writ issued. After return by the appellees, setting up only that the complaint failed to state facts sufficient to constitute a cause of action, the court discharged the alternative writ and denied a peremptory writ. The facts we have recited appear in the petition for the writ or are matters of which the court below and this court take judicial notice.

The Supreme Court of California overruled the appellant's contentions that the State's conceded control of activities within its jurisdiction gave it no authority to penalize transactions occuring on Moffett Field; that the State law violates the commerce clause of Article I, § 8 of the federal Constitution; that it runs afoul of congressional action embodied in the federal Agricultural Marketing Agreement Act,[9] and that it unlawfully burdens a federal instrumentality. We find it necessary to consider only the contention first stated.

The exclusive character of the jurisdiction of the United States on Moffett Field is conceded. Article I, § 8, clause 17 of the Constitution of the United States declares the Congress shall have power "To exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia, "and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;" . . .

When the federal government acquired the tract, local law not inconsistent with federal policy remained in force until altered by national legislation.[10] The state statute involved was adopted

[7] Act of February 12, 1931, c. 122, 46 Stat. 1092. This act provides that the tract which is now called Moffett Field shall be accepted by the United States without cost to the government. The petition for mandamus alleges that, more than fifteen years ago, Moffett Field "was purchased by the Government of the United States for erecting forts, magazines, arsenals, dock-yards and other needful buildings." . . . The appellant and the Government treat this allegation as conclusive, since it was not denied by the appellees. Nothing turns, in our view, on the method of acquisition.

[8] See Cal. Stats. 1897, p. 51; Political Code of California, § 34; U. S. Constitution, Art. I, § 8, clause 17.

[9] 50 Stat. 246, 7 U. S. C. 608c.

[10] Stewart & Co. v. Sadrakula, 309 U. S. 94, 99.

long after the transfer of sovereignty and was without force in the enclave. It follows that contracts to sell and sales consummated within the enclave cannot be regulated by the California law. To hold otherwise would be to affirm that California may ignore the Constitutional provision that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land;" . . .[11] It would be a denial of the federal power "to exercise exclusive Legislation."[12] As respects such federal territory Congress has the combined powers of a general and a state government.[13]

The answer of the State and of the court below is one of confession and avoidance,—confession that the law in fact operates to affect action by the appellant within federal territory, but avoidance of the conclusion of invalidity by the assertion that the law in essence is the regulation of conduct wholly within the State's jurisdiction.

The court below points out that the statute regulates only the conduct of California's citizens within its own territory; that it is the purchasing, handling, and processing by the appellant in California of milk to be sold below the fixed price—not the sale on Moffett Field—which is prohibited, and entails the penalties prescribed by the statute. And reliance is placed upon the settled doctrine that a state is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders.[14] We think, however, that it is without application here, because of the authority granted the Federal Government over Moffett Field.

In the light of the history of the legislation, we are constrained to find that the true purpose was to punish California's own citizens for doing in exclusively federal territory what by the law of the United States was there lawful, under the guise of penalizing preparatory conduct occurring in the State,—to punish the appellant for a transaction carried on under sovereignty conferred by Art. I, § 8, clause 17 of the Constitution, and under authority superior to that of California by virtue of the supremacy clause.

We have this day held in *Penn Dairies, Inc.* v. *Milk Control Commission*, No. 399, that a different decision is required where

[11] Art. VI, clause 2.

[12] James v. Dravo Contracting Co., 302 U. S. 134, 141.

[13] Stoutenburgh v. Hennick, 129 U. S. 141, 147.

[14] Alaska Packers Assn. v. Commission, 294 U. S. 532, 541; Osborn v. Ozlin, 310 U. S. 53, 62-63.

the contract and the sales occur within a state's jurisdiction, absent specific national legislation excluding the operation of the state's regulatory laws. The conclusions may seem contradictory; but in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results. This must be so, if we are to accord to various provisions of fundamental law their natural effect in the circumstances disclosed. So to do is not to make subtle or technical distinctions or to deal in legal refinements. Here we are bound to respect the relevant constitutional provision with respect to the exclusive power of Congress over federal lands. As Congress may, if it find the national interest so requires, override the State milk law of Pennsylvania as respects purchases for the Army, so it may, if not inimical to the same interest subject its purchasing officers on Moffett Field to the restrictions of the milk law of California. Until it speaks we should enforce the limits of power imposed by the provisions of the fundamental law.

The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice JACKSON.

While we have joined in the opinion of the Court, we are also of the view that the judgment below should be reversed for the additional reason set forth in the dissenting opinion in *Penn Dairies, Inc.* v. *Milk Control Commission*, No. 399, decided this day.

SUPREME COURT OF THE UNITED STATES.

No. 275.—October Term, 1942.

Pacific Coast Dairy, Inc., Appellant, *vs.* Department of Agriculture of the State of California, et al. } Appeal from the Supreme Court of the State of California.

[March 1, 1943.]

Mr. Justice Frankfurter, dissenting.

Both Pennsylvania and California, as part of their control over the supply and distribution of milk for the needs of their people, regulate the prices at which milk may be sold within the state. In both states, more particularly at Indiantown Gap Military Reservation, Pennsylvania, and at Moffet Field, California, units of the United States Army are stationed. At each of these sites the contracting officer, a junior officer in the Quartermaster Corps, invites bids for the sale of milk to the Army. Are these two contracting officers authorized under existing federal law to accept bids that undercut the prices fixed by Pennsylvania and California for the supply of milk within their borders and thereby dislocate, in part at least, the regulatory systems established by the two states?

In No. 399, *Penn Dairies, Inc.*, v. *Milk Control Commission of Pennsylvania*, Penn Dairies, a milk dealer of Lancaster, Pennsylvania, supplied milk for the use of the Army at Indiantown Gap Military Reservation. Their sales were the result of successful bidding at prices below the minima fixed by the Pennsylvania Milk Control Law. Subsequently, when Penn Dairies applied for renewal of its license to do business under state law, the Pennsylvania Milk Control Commission denied the application on the ground that the sales to the Army were not immune from the minimum price provisions of the Pennsylvania law. The Pennsylvania Supreme Court sustained this determination. In this case, No. 275, *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture of California*, Pacific Coast Dairy, a milk dealer of San Francisco, California, supplied milk for the use of the Army at Moffet Field, about thirty-five miles

from San Francisco. Their sales, too, were the result of successful bidding at prices below those fixed by California law. For thus departing from the price provisions of the state law under which it was licensed to do business, the California Department of Agriculture instituted proceedings to revoke Pacific Coast Dairy's license. To stay these proceedings the dairy sought a writ of mandamus, which was denied by the Supreme Court of California.

In my view, the Court in upholding the refusal by Pennsylvania to renew a license because of an arrangement made on behalf of the Government must imply that the contracting officer of the Indiantown Military Gap Reservation was not authorized to accept bids below the minimum price requriements set by Pennsylvania for the sale of milk within the state. In the California case, however, the Court holds that the contracting officer for Moffet Field may, in the case of sales and deliveries made on Moffet Field, contract at prices below those fixed by California for the sale of milk within its borders. Opposite legal results are thus reached for precisely the same practical situations. The justification for this incongruity in defining the scope of the authority of the two contracting officers is attributed to the difference in the nature of the Government's proprietary interest in each of the two Army sites. Indiantown Gap Military Reservation is held by the United States under lease from the Commonwealth of Pennsylvania. Moffet Field belongs to the United States outright. On the basis of this difference in the federal Government's proprietary interest in the two Army facilities, Indiantown Gap Military Reservation is deemed not to be within the "exclusive jurisdiction" of the Government while Moffet Field is deemed within such "exclusive jurisdiction". And from this classification it is deduced that milk sold to the Army for the use of our soldiers at Indiantown Gap Military Reservation must comply with the price provisions of Pennsylvania law, but that milk may be sold to the Army for the use of our soldiers at Moffet Field in disregard of the minimum prices set by California.

Legal refinements are not always the worse for eluding the quick understanding of a layman. But I do not believe that in determining the duty of contracting officers serving the same Army function—a matter that turns on considerations of policy in the relation of the various Army posts to the states in which they are situated—legal categories compel a difference in result where practical judgment and experience lead to an identity in result. The

power given to Congress by Article I, § 8 of the Constitution, to "exercise exclusive Legislation" over federal enclaves is not so tyrannical as to preclude in law what good sense requires.

The so-called exclusive jurisdiction drawn from the grant to Congress of power to legislate exclusively has, as a matter of historical fact, become increasingly less and less exclusive. In early days when the activities of the federal Government made only negligible inroads upon territorial areas within the states, it was assumed that federal exclusiveness was a fact rather than a potentiality, and that the states were precluded from reserving authority in lands within the state which were ceded to the Government. But this notion never became law, and has now been formally repudiated. "The possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired." *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 148; and see *Mason Co.* v. *Tax Comm'n*, 302 U. S. 186. Indeed, in the case of Moffet Field itself the authority of the United States is not in any true sense exclusive, even as to matters of political authority, for California's act of cession provided that both criminal and civil process issued by California should have the same sanction on Moffet Field as elsewhere in the state.

Since exclusive authority need not be exercised by Congress, there is at times "uncertainty and confusion" whether jurisdiction belongs to the federal Government or has been left with the state. *Bowen* v. *Johnston*, 306 U. S. 19, 27. And although the acts of cession may leave "no room for doubt" that "jurisdiction" "remained with the State", "administrative construction" may nevertheless generate federal jurisdiction. *Id.*, at 29. Even where the federal Government supposedly has "exclusive" jurisdiction, a close examination of complicated legislation may uphold excise tax provisions of a state alcoholic beverage control law but not provisions that "go beyond aids to the collection of taxes and are truly regulatory in character". *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 533. And while lip service is paid to the doctrine of "exclusive jurisdiction" by professing to absorb for federal enclaves those laws of the state which were enforced there prior to its cession, the liberality with which state social measures are deemed not to impinge upon the national purposes for which the

enclave was established, is a recognition in fact that the Constitution permits sensible adjustments between state and federal authority although activities subject to legal control take place on federal territory within a state. See, *e. g., Stewart & Co.* v. *Sadrakula*, 309 U. S. 94.

Enough has been said to show that the doctrine of "exclusive jurisdiction" over federal enclaves is not an imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state—problems calling not for a single, simple answer but for disposition in the light of the national purposes which an enclave serves. If Congress speaks, state power is of course determined by what Congress says. If Congress makes the law of the state in which there is a federal site as foreign there as is the law of China, then federal jurisdiction would really be exclusive. But short of such Congressional assertion of overriding authority, the phrase "exclusive jurisdiction" more often confounds than solves problems due to our federal system.

It is certainly an irrelevant factor in the legal equation before us. For in neither the Pennsylvania nor the California case is the power of Congress or of appropriately exercised military authority called into question. As to Pennsylvania, the Court has found that neither Congressional legislation nor discernible legislative policy immunized a government contractor from state regulation. Of course, if Congressional policy, howsoever expressed, authorized the Quartermaster to enter into such a contract in disregard of local milk price control legislation, the contractor would be immune from obedience to local requirements. Nor has controlling assertion of military authority to disregard local price control been found. There is no suggestion that Congress or the Army has a policy regarding the purchase of milk for soldiers stationed in California which differs from that in Pennsylvania. State regulation, we have held in the case of Pennsylvania, "imposes no prohibition on the national government or its officers". Neither does the California regulation. It clearly does not as to federal sites in California which have been leased to the Government, like the Indiantown Gap Military Reservation, or to sites where the state has reserved concurrent jurisdiction, like those in the *Dravo* and *Mason* cases, *supra*, or to federal territory where jurisdiction is doubtful or ambiguous, like the reservation in *Bowen* v. *Johnston*, *supra*. The California Supreme Court advises us that

within the confines of California the United States is engaged in a great variety of activities: "The federal territory within the state is so fragmented that there may be several federal islands within a single marketing area. If they are citadels of immunity from state jurisdiction, they are also exceptional segments in areas that are otherwise subject to that jurisdiction. They stand out like colored pins on the map of California, and range from military reservations to soldiers' homes, from court houses to penitentiaries, from post offices to Indian reservations, from national parks to regional dams." 19 Cal. 2d 818, 828.

Can it be that the considerations of policy which resulted in a finding that neither the Constitution nor Congressional authority nor appropriate military regulation enabled the Army contracting officer in Pennsylvania, in supplying milk to the soldiers stationed in Pennsylvania, to free local dealers from the necessity of complying with a social measure not unrelated to health and deemed important to the welfare of the people of Pennsylvania, are present in some parts of California and not in others? And must a junior contracting officer of the Quartermaster Corps now attempt to ascertain whether these considerations of policy do or do not apply, depending upon whether the particular enclave is within the "exclusive jurisdiction" of the federal Government—a question so recondite, as the cases show, that it may be settled only by this Court after long travail? Is the result to turn upon the niceties of the law of sales and contracts? Suppose, for example, that the negotiations occur and the contracts are signed off Moffet Field, but delivery takes place there. Must inquiry be made as to where title has "passed" and the sale consummated?

These are not far-fetched suppositions. They are the inevitable practical consequences of making decision here depend upon technicalities of "exclusive jurisdiction"—legal subtleties which may become relevant in dealing with prosecution for crime, devolution of property, liability for torts, and the like, but which as a matter of good sense surely are wholly irrelevant in defining the duty of contracting officers of the United States in making contracts in the various States of the Union, where neither Congress nor the authoritative voice of the Army has spoken. In the absence of such assertion of superior authority, state laws such as those here under consideration appear, as a matter of sound public policy, equally appropriate whether the federal territory

encysted within a state be held on long or short term lease or be owned by the Government on whatever terms of cession may have been imposed.

We are not dealing here with the authority of Congress, about which there can be no controversy, but with the authority of Government contracting officers. It is surely the policy of neither Congress nor the Army that such authority should vary from state to state or from post to post within the same state. On the contrary, there is every reason for assuming that, in the matter here involved, uniformity throughout the land is deemed an essential element of the national policy. Since, as the Court holds in the Pennsylvania case, the national interest is furthered rather than impaired by requiring the Quartermaster at the Indiantown Military Reservation to observe the Pennsylvania Milk Control Law, there is every reason why the Quartermaster at Moffet Field should likewise observe the similar California law. And since he should observe the state law California has a right to insist that the milk dealer licensed by it should not participate in a violation of the law of his state, by license from which he does business.

SUPREME COURT OF THE UNITED STATES.

No. 275.—October Term, 1942.

Pacific Coast Dairy, Inc., Appellant,
vs.
Department of Agriculture of the State of California, et al.
} Appeal from the Supreme Court of the State of California.

[March 1, 1943.]

Mr. Justice Murphy, dissenting.

I dissent for reasons stated in concurrence in *Penn Dairies, Inc.* v. *Milk Control Commission*, — U. S. — (No. 399 this Term). The fact that Moffett Field is a federal enclave instead of a leasehold does not justify denying California the power to protect the public health by requiring milk dealers selling to the United States to receive a minimum price, a power which we have today held that Pennsylvania possesses. True, Congress is given the power "to exercise exclusive legislation" over federal areas such as Moffett Field, (Constitution, Art. I, § 8, cl. 17), but that does not necessarily mean that the States, no matter what their interest or need, are absolutely without power to enact legislation, not inconsistent with Congressional policy or Constitutional dictates, which will apply in some measure to those areas which are within their boundaries. Before holding that this clause invalidates important state legislation like that now before us, especially at a time when federal activities are greatly expanding and vast areas are being acquired within the States by the federal government, the reasonableness and necessity of such a decision should be thoughtfully examined.

We derive much of our strength as a nation from our dual system of federal government. To promote the harmonious working of that system the general clauses of the Constitution which broadly delineate the boundaries of state and national power should be construed by appraising the respective state and national interests involved and striking a balance which gives appropriate recognition to the legitimate concerns of each government. Since those boundaries are not absolutes, the question necessarily is one

of reasonableness and degree. Cf. Holmes, J., dissenting in *Panhandle Oil Co.* v. *Knox*, 277 U. S. 218, 222, and again in *Springer v. Philippine Islands*, 277 U. S. 189, 209-210. This is the method which we have applied in testing state regulation of interstate commerce,[1] and it should govern the construction of the "exclusive legislation" clause. If a state is acting in matters normally within its competence, with which it is especially equipped to deal, to achieve important governmental ends such as the protection of the public health and welfare or the maintenance of orderly marketing conditions, the effects of its action should be allowed to extend into federal areas within its boundaries unless inconsistent with an act of Congress or the provisions or necessary implications of the Constitution. This formula allows the States to carry out important programs which must be of state-wide application to be effective and adequately recognizes the paramount character of federal power. Since we have held the comparable Pennsylvania statute does not contravene any act of Congress or the Constitution (*Penn Dairies, Inc.* v. *Milk Control Commission*, *supra*), the instant California legislation satisfies this test.

The "exclusive legislation" clause has not been regarded as absolutely exclusory,[2] and no convincing reason has been advanced why the nature of the federal power is such that it demands that all state legislation adopted subsequent to the acquisition of an enclave must have no application in the area. In waging war under modern conditions it is essential that state and national, military and civilian authorities, work together as a unit, each

[1] While it is Congress that is given the power to regulate commerce among the States, some state regulation of that commerce is permissible. "When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved." Parker v. Brown, — U. S. —, —, (No. 46 this Term, pp 14-15). State regulation is to be upheld if "upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress." *Ibid.*, p. 15.

[2] The common sense view has been taken that even though Congress has not legislated to that effect, local law existing at the time an enclave is acquired, which does not defeat the national purpose, remains in effect within the enclave until altered by Congress. Stewart & Co. v. Sadrakula, 309 U. S. 94. And the States may qualify their consent to the federal government's purchase by retaining some measure of jurisdiction. James v. Dravo Contracting Co., 302 U. S. 134.

complementing the others. The state governments have functions to perform that are vital to the war program, including those functions pertaining to the public health. So long as there is no overriding national purpose to be served, nothing is gained by making federal enclaves thorns in the side of the States and barriers to the effective state-wide performance of those functions. Indeed both the federal government and the nation as a whole suffer if the solution of legitimate matters of local concern is thus thwarted and local animosity created for no purpose. A disposition on the part of the federal government or its military arm to ignore local regulations such as the present one is not only fraught with danger to the public health, but also may create a public feeling of distrust which itself will hamper the military effort.

If Congress exercises its paramount legislative power over Moffett Field to deny California the right to do as it has sought to do here, the matter is of course at an end. But until Congress does so, it should be the aim of the federal military procurement officers to observe statutes such as this established by state action in furtherance of the public health and welfare, and otherwise so conduct their affairs as to promote public confidence and good will.